

Internal Revenue Service
memorandum
MSOr
TL-N-5957-95

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to: Larry H. Smoller
Sr. Team Coordinator, CE:1118
Examination Division, Glendale, CA

from: District Counsel
Thousand Oaks

subject: [REDACTED], formerly [REDACTED],
formerly [REDACTED] and Subsidiaries
Advice Regarding The Proper Party To Sign Form 872-F

DISCLOSURE STATEMENT

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ISSUE

Whether [REDACTED] is the proper party to sign Form 872-F extending the statute of limitations on nonpartnership items for tax years ending [REDACTED], [REDACTED] and [REDACTED] during which periods [REDACTED] was the common parent of a consolidated group.

Conclusion: [REDACTED] is the proper party to sign the Form 872-F for tax years ending December 31, [REDACTED], December 31, [REDACTED] and December 31, [REDACTED]. The front of Form 872-F should read as follows:

[REDACTED] (EIN: XX-XXXXXXX), formerly [REDACTED]
[REDACTED], formerly [REDACTED] and Subsidiaries*

The asterisk refers the reader to the following statement at the bottom of the form:

*This is with respect to the consolidated tax liability of [REDACTED]
[REDACTED], formerly [REDACTED], formerly [REDACTED]
(EIN: XX-XXXXXXX), and Subsidiaries, consolidated group for the taxable years ended December 31, [REDACTED], December 31, [REDACTED] and December 31, [REDACTED].

The signature block should read as follows: [REDACTED]
[REDACTED], formerly [REDACTED], formerly [REDACTED].
The signature and title block should contain the signature and title of the current officer of [REDACTED].

FACTS

(A) Background:

It is our understanding that these are the facts. [REDACTED]
[REDACTED], a Japanese entity, (" [REDACTED] ") owned [REDACTED] % of [REDACTED]
[REDACTED]'s stock prior to [REDACTED]. [REDACTED] is a U.S.
corporation and was the parent of the consolidated group for tax years ending December 31, [REDACTED], December 31, [REDACTED] and December 31, [REDACTED]. At some point prior to [REDACTED], [REDACTED] changed its name to [REDACTED].

[REDACTED] organized another entity in the United States named [REDACTED]
[REDACTED] (" [REDACTED] "). On [REDACTED], in a reverse acquisition, [REDACTED]
acquired the stock of [REDACTED] from [REDACTED]. Thereafter, [REDACTED] became the
new common parent of the consolidated group and [REDACTED] survived as its
wholly owned subsidiary.

On [REDACTED], [REDACTED] transferred the [REDACTED] stock to another of its wholly owned subsidiaries, [REDACTED]. Accordingly, [REDACTED] became the subsidiary of [REDACTED]. On [REDACTED], [REDACTED] sold [REDACTED] % of the stock of [REDACTED] to [REDACTED] (" [REDACTED] "). On [REDACTED], [REDACTED] changed its name to [REDACTED].

Linda Flemins, the former Group Manager for group CE 1118, requested our advice regarding who would be the proper party to sign Form 872 extending the statute of limitations for tax years ending December 31, [REDACTED], December 31, [REDACTED] and December 31, [REDACTED]. In a memorandum dated April 10, 1997 which was submitted to the National Office for post-review and approved, our office rendered an opinion finding that [REDACTED] was the proper party to sign Form 872 under Treas. Reg. § 1.1502-77T(a). Our office was unaware of the taxpayer's further name change to [REDACTED].

(B) Facts Relating To Form 872-F:

[REDACTED] (" [REDACTED] ") was a subsidiary of [REDACTED] during the years in issue. [REDACTED] was also the Tax Matters Partner ("TMP") of a partnership named [REDACTED], dba [REDACTED].¹

The agent audited the partnership returns for fiscal years ended October 31, [REDACTED], October 31, [REDACTED] and October 31, [REDACTED] and prepared Form 4605 reflecting three adjustments. The agent signed Form 4605 on [REDACTED]. The president of [REDACTED], the TMP, signed Form 4605 on [REDACTED]. Terry Sampson, the Los Angeles District TEFRA Coordinator signed the Form 4605 on [REDACTED].

On [REDACTED], the President of [REDACTED], the TMP signed Form 870-P containing the settlement agreement.² Recently, Larry Smoller, the Senior Team Coordinator received a notice from Terry Sampson that the one year statute for the nonpartnership items commenced to run on [REDACTED] and will expire on [REDACTED] if not extended with a Form 872-F.³

¹ [REDACTED] is the other partner and is unrelated to [REDACTED].

² On [REDACTED], the Vice President Taxation of [REDACTED] also signed Form 870-P.

³ Our office is not rendering an opinion as to the date on which the statute of limitations for the nonpartnership items commenced to run and/or expires. The dates above have been provided to our office and we are assuming that they are correct.

LEGAL DISCUSSION

In this case, the partnership items in issue were converted to nonpartnership items as a result of a settlement agreement entered into by the Secretary and [REDACTED] the partner. I.R.C. § 6231(b)(1)(C). Because I.R.C. § 6229(a) refers to the assessment of tax attributable to partnership items, the conversion of partnership items to nonpartnership items removes the assessment of tax attributable to such items from the purview of I.R.C. § 6229(a). I.R.C. § 6229(f) provides:

(1) Items becoming nonpartnership items. – If, before the expiration of the period otherwise provided in this section for assessing any tax imposed by subtitle A with respect to the partnership items of a partner for the partnership taxable year, such items become nonpartnership items by reason of 1 or more of the events described in subsection (b) of section 6231, the period for assessing any tax imposed by subtitle A which is attributable to such items (or any item affected by such items) shall not expire before the date which is 1 year after the date on which the items become nonpartnership items. The period described in the preceding sentence (including any extension period under this sentence) may be extended with respect to any partner by agreement entered into by the Secretary and such partner.

Pursuant to I.R.C. § 6229(f), the Service has a minimum of one year from the date of the conversion within which to assess tax attributable to the converted items. As the Tax Court noted in Harris v. Commissioner, 99 T.C. 121, 131 (1992):

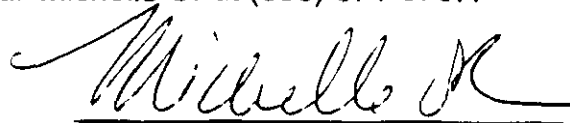
Section 6229(f) provides that, if before the period of limitations runs, partnership items become nonpartnership items due to a settlement between the partner and respondent, or for certain other reasons, the running of the limitations period is extended for 1 year. The section 6229 limitations period acts to extend the limitations period otherwise available under section 6501 when such period has otherwise expired. Section 6501(o)(2); Woody v. Commissioner, 95 T.C. 193, 205 (1990).

Under I.R.C. § 6229(f), the partner and the Secretary may enter into an agreement to extend the limitations period on the nonpartnership items. That is the particular partner for which an extension is being sought as oppose to the TMP acting on behalf of the partnership. In this case, [REDACTED] is the partner for which exam wishes to secure an extension of the one year statute. [REDACTED] in its capacity as a partner and

not as TMP. However since [REDACTED] is part of a consolidated group, another layer of analysis is required in determining which entity is the proper party to sign Form 872-F.

Under Treas. Reg. § 1.1502-77(a), the common parent is the sole agent for the subsidiaries in all matters relating to the tax liability for the consolidated return year unless otherwise excepted. The authority to sign a waiver to extend the statute of limitations on assessment is not excepted; therefore, the common parent is the sole agent for signing such extensions. Under the facts in this case, there is a new common parent, [REDACTED], and old common parent, [REDACTED] formerly [REDACTED] formerly [REDACTED]. Since the old common parent is still in existence, it is the proper party to sign Form 872-F.

If you have any questions, please call Michelle Or at (805) 371-6707.



MICHELLE OR
Attorney



STEVE ROTH
Attorney

cc:

Western Region
ARC (TL)